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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1974

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No. 74-623

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KENTUCKY CARBON CORPORATION and BITUMINOUS COAL OPERATORS' ASSOCIATION, *Petitioners,*

v.

INTERIOR BOARD OF MINE OPERATIONS APPEALS and FRANKLIN PHILLIPS, *Respondents*

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## MOTION OF AMERICAN MINING CONGRESS FOR LEAVE TO FILE BRIEF AMICUS CURIAE

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American Mining Congress respectfully moves for leave to file the attached brief *amicus curiae* in this case. The consents of the Petitioners and the Solicitor General have been obtained. The consent of the attorney for Respondent Phillips was sought but was refused.

American Mining Congress (AMC) is a national trade association whose membership consists of approximately 500 companies that produce most of the

nation's ferrous and non-ferrous metals, coal, industrial and agricultural minerals, and cement. This includes more than 200 companies that manufacture mining and mineral processing equipment and supplies, as well as financial institutions with a business interest in the mining industries.

As grounds for this Motion, American Mining Congress asserts that the June 20, 1974, split decision of the United States Court of Appeals for the District of Columbia Circuit, made without benefit of oral argument, is not only erroneous in law but will have a substantial adverse impact upon the operations of AMC's members who engage in coal mining and who are subject to the provisions of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 801, *et seq.* Moreover, the sweeping statutory construction embodied in the Court's decision could bear upon the interpretation of similar anti-discrimination provisions applicable to AMC members subject to the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, the National Labor Relations Act, 29 U.S.C. § 141 *et seq.*, and the Occupational Safety and Health Act, 29 U.S.C. § 651 *et seq.*

Mineral substances and the products derived from them are vital to all segments of our economy and technology and many of them are vital to national security. The decision of the Court of Appeals below, directly and adversely affecting as it does the labor-management relations and ability of AMC members and others to manage their businesses, should be reviewed for these reasons as well as to correct purely legal errors.

While American Mining Congress fully concurs in the arguments advanced by the Kentucky Carbon

Corporation and Bituminous Coal Operators' Association for granting the writ of certiorari sought herein, American Mining Congress believes that the impact of this decision on all mining and minerals producers together with the importance of this industry to the welfare of the United States make it appropriate for this Court, in its consideration of the Petition, to have a full understanding of these issues. The brief *amicus curiae* which American Mining Congress seeks permission to file will, we believe, materially assist the Court in appreciating the full impact of the decision below and the need for its review.

Respectfully submitted,

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## BRIEF OF AMERICAN MINING CONGRESS AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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American Mining Congress submits this brief *amicus curiae* in support of the Petition filed by Kentucky Carbon Corporation and Bituminous Coal Operators' Association for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case, reported as *Phillips* v. *Interior Board of Mine Operations Appeals,* 500 F.2d 772 (D.C. Cir. 1974).

## THE AMICUS AND ITS INTEREST

The importance of mining to the United States cannot be overstated. Mineral substances and the products derived from them form the material basis of our economy and technology. All Americans are totally dependent on these products not only for their standard of living—the highest in the world—but also for their survival, a fact which has become only too familiar in recent times because of the shortage of certain of these materials and their control in some instances by foreign sources.

The significance of mining is apparent from its effect on our economy. Although actual mineral production is slightly less than 3 percent of the gross national product, mining was recently reported to have a direct impact on 40% of the gross national product and an indirect impact on 75% of the gross national product.[1]

American Mining Congress is a national trade association, founded in 1897, whose membership consists of approximately 500 companies that produce most of the nation's ferrous and non-ferrous metals, industrial and agricultural minerals, and cement. This includes more than 200 companies that manufacture mining and mineral processing equipment and supplies, as well as financial institutions with a business interest in the mining industries. The purposes of American Mining Congress are:

a. To foster, promote and develop the general welfare of the mineral industries and all their various branches within the United States;

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[1] See, Statement of Andrew Fletcher, Hearings before the Subcommittee on Minerals, Materials, and Fuels of the Committee on Interior and Insular Affairs, United States Senate, 91st Congress, 1st session, 1969 p. 33.

b. To cooperate with governmen in furthering the national welfare and in developing mining and metallurgy; and

c. To encourage and provide a medium for education in practical and scientific mining and metallurgy; and

d. To encourage and promote, and assist the minerals industry in, the development of the means for detecting, eliminating and preventing the causes of illness and injury among the industry's employees.

As spokesman for the mining industry of the United States, American Mining Congress has a legitimate interest in any governmental or other action which might affect that industry. It is clear that the decision of the United States Court of Appeals for the District of Columbia Circuit in this case presents serious and far reaching implications for members of American Mining Congress. If the judgment below is upheld, it could have direct and disruptive effects on the orderly management of the operations of mining companies, and upon the labor-management relations of those companies, which have particular implications for the national interest.

Each of the member companies of American Mining Congress thus has a substantial interest in the ultimate decision in this case.

## ARGUMENT

By a 2 to 1 decision, rendered without the benefit of oral argument, the United States Court of Appeals for the District of Columbia Circuit on June 20, 1974, handed down a ruling that is not only unique in its interpretation of the statute involved, but is far reaching in its implications and impact for labor-manage-

ment relations not only in the coal mining industry, but also in the metal and non-metallic mining industries, and, indeed, industry generally.

1. Viewed in its narrowest sense, the Court below has decided that the "authorized representative of the Secretary" of the Interior for purposes of § 110(b)(1) of the Coal Mine Health and Safety Act, 30 U.S.C. § 820(b)(1), need not be a coal mine inspector and in fact need not even work for the federal government. He can, according to the Court, be simply an employee of the mine. At the very least, the majority's view reflects a very strained interpretation of statutory language which has always been regarded as clear on its face. The majority's reading is likewise inconsistent with existing administrative interpretations.[2] While the Coal Mine Health and Safety Act has never been looked on as the clearest and most precise legislative enactment, the legislative history which does exist strongly compels a conclusion contrary to that reached by the majority of the Court below.[3]

Nowhere in the statute or its history is there authority for the holding that when a safety complaint is made to a mine foreman, that foreman, merely by virtue of receiving the complaint, somehow becomes—in the words of the statute—the "authorized representative" of the Secretary of the Interior; or that the complaining employee thereby "institutes a proceeding" under the Act. Clearly, the interpretation of the Court below has stretched the provision in question out of all recognition and intended meaning merely to satisfy a view of what the law might have said or might have intended.

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[2] See Dissenting Opinion of Judge Robb below, 500 F.2d 772, 783.

[3] *Ibid.*

2. As pointed out by the Petitioners herein, this case not only affects the rights and obligations of more than 140,000 coal miners and the operators of some 2,000 bituminous and anthracite mines in this country, but also affects the rights and obligations of every employee and employer subject to similar provisions of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, the National Labor Relations Act, 29 U.S.C. § 141 *et seq.*, and the Occupational Safety and Health Act, 29 U.S.C. § 651 *et seq.* The decision of the Court below represents far more than a broad and erroneous interpretation of a remedial statute. Its effects could be to shift substantial management prerogatives away from employers, to lay the ground work for the assertion of spurious safety claims as a bargaining device in labor-management disputes, and to permit (indeed to encourage) employees to take unilateral action regarding alleged safety problems under this ruling which they cannot take under their own collective bargaining agreements or under other applicable safety and labor-management laws. In short, American Mining Congress fully concurs in the conclusion reached by Judge Robb in his dissenting opinion below:

> The impact of this decision on mine operations will be substantial. Even more important and significant, in my opinion, is the determination of my colleagues to override a clear and unambiguous statutory provision and substitute the broader protection which they believe miners ought to have as a matter of policy. This is an intrusion into the legislative domain in which I cannot join. 500 F. 2d 772, 788.

## CONCLUSION

This case involves issues of great national importance and the petition for writ of certiorari should therefore be granted.

Respectfully submitted,

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